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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

* * * * *

ATOMIC SAFETY AND LICENSING BOARD PANEL

PRE-HEARING CONFERENCE CALL

* * * * *

IN THE MATTER OF:

EXELON GENERATION COMPANY, Docket No.

LLC 52-007-ESP

(Early Site Permit for

Clinton ESP Site)

Tuesday, October 19, 2004

Teleconference

The above-entitled matter came on for
hearing, pursuant to notice, at 11:00 a.m.

BEFORE:

PAUL B. ABRAMSON, Chairman

ANTHONY J. BARATTA, Administrative Judge

DAVID L. HETRICK, Administrative Judge

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P R O C E E D I N G S

11:03 a.m.

JUDGE ABRAMSON: This is Judge Abramson. Good morning. It's 11 a.m. Eastern Time. Washington time or New York time, depending on things, on Tuesday, October 19th. And we are convened in Docket 52-007-ESP which concerns the application of Exelon Generation Company for an on-site permit for Clinton. However, this conference call is to follow up on matters relating to the RAI issued by the Staff and answered by Exelon recently regarding Intervenor's contention EC3.1.

I wanted to note in our last conference call that this Board is required to consult with you in issuing a scheduling order as soon as practicable and that's what we'd like to focus on after we hear the reactions of the Staff and the Intervenor's to the Applicant's responding to the RAI.

The other Members of the Board are Dr. Anthony Baratta, B-A-R-A-T-T-A, who is here with me at NRC Headquarters; and Dr. David Hetrick, H-E-T-R-I-C-K, who is joining us once again by teleconference from sunny Arizona.

Let's now get on the record the names and affiliations of the other participants in this

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1 conference call. I'd like to ask you for the benefit
2 of the Court Reporter to indicate who is present from
3 your side and spell the names of those folks.

4 Let's start with counsel for Exelon.
5 Would you introduce yourself and those who are
6 participating on behalf of the Applicant?

7 MR. FRANTZ: This is Steve Frantz, F-R-A-
8 N-T-Z. And I have with me Paul Bessette, B-E-S-S-E-T-
9 T-E. We're from Morgan Lewis and we're counsel for
10 Exelon.

11 JUDGE ABRAMSON: And there's nobody for
12 the Applicant other than the counsel?

13 MR. FRANTZ: That's correct.

14 JUDGE ABRAMSON: Okay. Staff?

15 MS. LEMONCELLI: Good morning. This is
16 Mauri Lemoncelli with the NRC Staff. Let me spell
17 that. M-A-U-R-I L-E-M-O-N-C-E-L-L-I. I have with me
18 Ann Hodgdon, H-O-D-G-D-O-N. And Sama Zipkin, Z-I-P-K-
19 I-N. In addition to the Staff, we have Tom Kenyon, K-
20 E-N-Y-O-N, Senior Project Manager at the Clinton ESP.

21 JUDGE ABRAMSON: Thank you. And counsel
22 for the Intervenors?

23 MR. FISK: This is Shannon Fisk, S-H-A-N-
24 N-O-N F-I-S-K. And Howard Learner. Environmental Law
25 and Policy Center.

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1 MR. LEARNER: Howard Learner, L-E-A-R-N-E-
2 R.

3 JUDGE ABRAMSON: Okay, for the
4 Intervenors, is there anybody else on the call?

5 MR. LEARNER: No.

6 JUDGE ABRAMSON: Okay, great. Then let's
7 get started. I'd like to begin by asking Staff if
8 they've had time to digest the Applicant's responses
9 to the RAI and whether the Staff finds these responses
10 complete or do they expect to have to follow-up with
11 further RAIs on it.

12 MS. LEMONCELLI: Your Honor, we have had
13 the opportunity to take a look at the RAIs, although
14 the Staff is currently reviewing the answer to RAI.
15 At this point in time, we're not sure if we need to
16 follow up with additional RAIs. We're still reviewing
17 the answers.

18 JUDGE ABRAMSON: When do you think you'll
19 have that?

20 MS. LEMONCELLI: Perhaps three to four
21 weeks, Your Honor. This is a ballpark figure.

22 JUDGE ABRAMSON: Okay. Well, as we all
23 know, the main purpose of giving us some time was for
24 the Intervenor to take a look at them so they could
25 decide whether or not they want to continue their

1 contention that this application is deficient.

2 Where are we on that, Mr. Fisk and Mr.
3 Learner?

4 MR. LEARNER: Your Honor, this is Howard
5 Learner. While we respect what the Applicant has
6 submitted, we believe that it's not yet adequate. We
7 believe there are some serious questions here in terms
8 of as the contention has been admitted, we believe
9 that the combination of wind power, solar power, clean
10 coal and other renewable energy resources does indeed
11 form a better, faster, cheaper and safer alternative
12 and we believe we ought to be able to go forward to
13 present our case on that.

14 As I believe you know, we have pending
15 before the Commission, the interlocutory motion. If
16 that were accepted and granted, then we believe energy
17 efficiency should be put into that combination as
18 well.

19 JUDGE ABRAMSON: Yes. We understand
20 there's the interlocutory. I have no information from
21 the Commission on what they're doing with that.

22 So I guess we just have to wait for that.
23 But it sounds to me as if Staff is going to need some
24 time to keep looking at this and there may be further
25 RAIs, but then based on what you've seen, the

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1 Intervenor still feel that this response is
2 insufficient, so we ought to talk about w.schedule for
3 discovery.

4 Now in our last conference call, the
5 Intervenor indicated that it sounds like everybody
6 agreed that this -- that it might make sense for this
7 to await the issuance of the final environmental
8 impact statement from the Staff.

9 What is your view of that -- let's go with
10 the Intervenor. Is that still something we should
11 contemplate or should we go on with the discovery.

12 I'm sorry, Dr. Baratta?

13 ADMINISTRATIVE JUDGE BARATTA: Dr.
14 Baratta. With respect to environmental impact
15 statement or environmental assessment, have you
16 determined what you will be issuing?

17 JUDGE ABRAMSON: I think Judge Baratta's
18 question to the Staff is do we expect that the FEIS
19 have a broader reach than the Applicant's ER in terms
20 of these issues.

21 MS. LEMONCELLI: Your Honor, this is Mauri
22 Lemoncelli for the Staff. May I have a moment to
23 confer with Mr. Kenyon?

24 JUDGE ABRAMSON: Sure.

25 MS. LEMONCELLI: Thank you.

(Pause.)

MS. LEMONCELLI: Thank you, Your Honor. I just spoke with Mr. Kenyon and the Staff is still reviewing whether or not we'll be going beyond the scope of the ER. We're not sure at this point in time and as I indicated in our last answer, we're still reviewing the answers to RAIs.

I just would like to make one quick correction while I have the opportunity. In the fourth order for this telecon, dated September 30th, the Board indicated in part 2 on page 2 in hearing schedule that the FEIS is expected to be released in November of 2005. In the last telecon, I don't have the transcript with me, I believe we indicated it will be September 2005, that the Staff expects to complete the FEIS.

JUDGE ABRAMSON: Okay. Maybe I misread the transcript. But in any case, if it's September, that's helpful.

So let's see where we go with this. It sounds to me like the Staff doesn't yet know the scope of its FEIS. If the FEIS isn't going -- or is going to be out in September 2005, do we have an idea when the Staff might know the scope of the study is that it's going to issue? In other words, you're going to

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1 spend three or four weeks looking at the responses to
2 the RAIs to try to determine whether you need more,
3 whether you need to issue further follow-up RAIs.
4 That sounds to me as if you're -- even if you issue
5 more RAIs or don't issue more RAIs, I'm
6 not sure I understand what that would do to the
7 decision making process for the staff on when it would
8 know what the scope of its FEIS would be.

9 When is the draft EIS going to be out?

10 MS. LEMONCELLI: Your Honor, this is again
11 Mauri Lemoncelli for the Staff. At this point, we
12 don't have a hard and fast determination on our
13 schedule.

14 If I could just have a moment once again,
15 please?

16 JUDGE ABRAMSON: Sure.

17 MS. LEMONCELLI: Thank you, Your Honor.

18 (Pause.)

19 MS. LEMONCELLI: Your Honor, this is Ms.
20 Lemoncelli. Mr. Kenyon tells me that the writing
21 sessions of the Draft EIS are scheduled in November.
22 It may now be scheduled for December. So I'll have to
23 adjust the schedule accordingly, and unfortunately, we
24 won't be able to give you a determination much beyond
25 that.

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1 JUDGE ABRAMSON: Did you say it may not be
2 scheduled for December or may be?

3 MS. LEMONCELLI: It may now be scheduled
4 in December. So it will be moved to one month on the
5 schedule.

6 JUDGE ABRAMSON: And when that happened,
7 at the writing session, is that when it is made for
8 scope or is the scope made after the writing
9 progresses?

10 MS. LEMONCELLI: Typically during the
11 writing session, Your Honor.

12 JUDGE ABRAMSON: Okay, well, given that
13 and given our mandates and order laying out a
14 schedule, where do we go with this? The Intervenors
15 had said that they'd like to go on with this.

16 Would the Intervenors like to start
17 depositions before Staff has made its determination
18 where it's going to go?

19 MR. LEARNER: Your Honor, this is Howard
20 Learner. If that is Your Honor's preference, we're
21 certainly willing to proceed in that direction. We
22 had agreed with the Applicant and with Staff that just
23 for reasons of efficiency it probably would make more
24 sense to hold off on that until the EIS came out and
25 we could then do it on a consolidated basis.

1 JUDGE ABRAMSON: I don't see any reason we
2 can't say that. We're certainly not going to promote
3 any inefficient operations.

4 (Laughter.)

5 MR. LEARNER: Judge Abramson, that's not
6 what I was suggesting.

7 (Laughter.)

8 I was just saying that for whatever
9 reason, Your Honor preferred, we are prepared to go
10 forward. We think it's probably a more sensible
11 procedure to wait until the EIS comes out.

12 MR. FRANTZ: Judge Abramson, this is Steve
13 Frantz, under the current rules there is no provision
14 for depositions or additional discovery beyond the
15 discovery disclosures that have been made and the
16 updates that will be made periodically.

17 JUDGE ABRAMSON: Yes, we understand that.
18 And I don't know whether that's going to be sufficient
19 or not. We have to wait and see what all is
20 disclosed. So we'll have motions, etcetera.

21 But we need, for example, written
22 statements of position, written testimony, responses
23 and rebuttal, etcetera. All of that, questions for
24 witnesses, questions on rebuttal. All of that seems
25 to me dated on when we have an FEIS and we have the

1 Applicant's final application. So I'm certainly
2 comfortable. I think --

3 ADMINISTRATIVE JUDGE BARATTA: If we don't
4 have a date for the EIS coming out, could we agree on
5 the way this schedule is set up, we have a written
6 statement of position, etcetera and so many days after
7 that responses and similarly -- so if we were to agree
8 say so many days after issuance of the EIS, we could
9 actually come up with something that gave us an
10 outline in terms of so many days after the issuance of
11 the EIS. Would that be something that we might be
12 able to work out?

13 MR. FRANTZ: Yes, I think so. I would
14 recommend that within 30 days after the final EIS
15 comes out that the parties file their initial written
16 testimony and statements of position.

17 JUDGE ABRAMSON: How do the Intervenors
18 feel about 30 days? Does that sound like a good
19 number for you?

20 MR. LEARNER: Your Honor, we were -- what
21 about 45 days. It would give us a little bit more
22 room. That's fine.

23 MS. LEMONCELLI: The Staff has no
24 objection to 45 days, Your Honor.

25 MR. FRANTZ: We would be willing to accept

1 45 days.

2 JUDGE ABRAMSON: After the FEIS?

3 MR. FRANTZ: Yes.

4 MS. LEMONCELLI: That's correct, Your
5 Honor.

6 JUDGE ABRAMSON: All right, so why don't
7 we -- we'll go to schedule on that basis and we'll get
8 some sort of an order out and while it's -- it does
9 not give the Commission all the definitiveness it
10 needs, it at least recognizes the realities which are
11 that (a) we shouldn't be inefficient; and (b) that the
12 practicality is, nobody can really do much until we
13 see what the final EIS is. So why don't we do that?

14 In the meantime, you can all keep us all
15 abreast. What we ought to do is schedule --

16 ADMINISTRATIVE JUDGE BARATTA: Just
17 suggesting if -- we've annotated the part 2 and we
18 could quickly run through the application as to when
19 things happen.

20 JUDGE ABRAMSON: That's probably useful
21 for you, so it will get in the record. Let's say that
22 we say that written statements of position of written
23 testimony with affidavits are due 45 days after the
24 FEIS. Then the 2.120782 tells us that the written
25 responses and rebuttal and supporting affidavits are

1 due 20 calendar days later, as are proposed questions
2 for witnesses and proposed questions on rebuttal due
3 7 days after that. And the motions to permit cross
4 exam., we really can establish that date, but that is
5 the Board can, but I'd like to see those due the same
6 day as the rebuttal questions because you'll know by
7 then whether you want to ask for permission to conduct
8 cross examination.

9 Then we'll have to sort out the hearing
10 location and date and that's at our discretion. Once
11 we've had the hearing, there's 30 days with some
12 discretion for us to issue the proposed findings and
13 conclusions and then our initial decision. We just
14 have to set in the schedule.

15 ADMINISTRATIVE JUDGE BARATTA: That's
16 actually the proposed findings and conclusions are due
17 in to us -- that's the schedule we want you to follow,
18 so you understand what we'll find once we actually
19 have that EIS and things get in motion.

20 I would anticipate, I would hope that and
21 we won't put this in order, but I would say the
22 hearing that follows would be somewhere between 30 to
23 60 days after we get all the paper in, something like
24 that, depending on availability.

25 JUDGE ABRAMSON: Yes, it will depend on

1 mostly, I expect, on witness availability. It won't
2 depend so much on our digested information. We'll be
3 up to speed within 30 days after we've got everything.
4 So the big question is going to be when the timing of
5 witnesses.

6 Does anybody have any other questions or
7 comments?

8 MS. LEMONCELLI: This is Mauri Lemoncelli
9 for the Staff, Your Honor. No, not at this time.

10 MR. LEARNER: Nothing further for the
11 Intervenors, Your Honor. Perhaps if the Staff's
12 schedule on the FEIS changes significantly over time,
13 if you might give us all notice.

14 JUDGE ABRAMSON: Why don't we ask the
15 Staff to do this. Staff is planning to have an
16 initial writing session on the EIS. Let us know when
17 that happens. Right now, it's scheduled in December
18 or maybe scheduled in November or December. Is that
19 correct?

20 MS. LEMONCELLI: Your Honor, the Staff
21 will be happy to update the Board and parties as soon
22 as the Staff makes us aware of any updates to the
23 schedule.

24 MR. LEARNER: That's fine.

25 JUDGE ABRAMSON: I think that's the way we

1 should proceed. And so we'll issue an order setting a
2 schedule all turning on the date of the issuance of
3 the FEIS.

4 ADMINISTRATIVE JUDGE BARATTA: Maybe if
5 the Staff could agree to provide us and all parties --
6 I don't want to get into privileged information or
7 anything like that, but what your conclusion is as to
8 what type of document you plan to issue and could you
9 determine that in the scope of the EIS in December, if
10 we could get some notification of that and what the
11 schedule will be at that time?

12 MS. LEMONCELLI: This is Mauri Lemoncelli
13 for the Staff. The December date is referred to the
14 writing session for the EIS, but no document will be
15 produced at that time.

16 ADMINISTRATIVE JUDGE BARATTA: I got the
17 impression you'd have at least some idea of the scope
18 at that time.

19 MS. LEMONCELLI: That's correct. That's
20 yet to be determined, but --

21 ADMINISTRATIVE JUDGE BARATTA: Well --

22 MS. LEMONCELLI: I hesitate to give
23 certain dates because the Staff is just not certain of
24 the time schedule right now.

25 JUDGE ABRAMSON: We understand that. I

1 think what Judge Baratta hoping that he could get
2 would be something that would tell us the scope of the
3 FEIS, at least with respect to this area of the
4 contention and I can see all the ramifications of
5 asking the Staff to do that. So that's a --

6 ADMINISTRATIVE JUDGE BARATTA: Apart from
7 that, do we need to have another conference call in
8 another month or so?

9 JUDGE ABRAMSON: My suggestion is we
10 should wait to see -- to have a conference call after
11 the Staff has had its initial writing session so the
12 Staff can update everybody as to what they see as the
13 timing and process from that.

14 Does that work for everybody? Staff?

15 MS. LEMONCELLI: Your Honor, that would be
16 acceptable. If I could just qualify, particularly for
17 the Intervenors as to this question, in terms of the
18 writing session scheduled in December right now, after
19 the Staff writes the document, it goes through the
20 Staff concurrence chain. That typically takes a
21 number of weeks. It may even take a number of months
22 before the draft is issued.

23 JUDGE ABRAMSON: Help me understand what
24 you would expect to produce in this initial writing
25 session. Is it the actual document or is it an

1 outline or how much level of detail will be produced
2 in this conference?

3 MS. HODGDON: Ann Hodgdon. I'm
4 interrupting here, Ms. Lemoncelli and the Staff, and
5 I don't like to do this, but in any event the way we
6 normally do this is that we go to the writing session
7 and then we bring it back and it has to be reviewed by
8 management and if we have any real concerns from
9 management then we might revisit certain sections and
10 so forth. It takes us several months to get it out.

11 After that time, and we get the draft out,
12 we have a meeting which is subject to the regulation
13 in which we take comments on the draft and we include
14 those in our final and we address all those in our
15 final.

16 JUDGE ABRAMSON: And the draft is made
17 available to --

18 MS. HODGDON: The draft is made available.

19 JUDGE ABRAMSON: So everybody will see it
20 and the Intervenors will have a chance to get involved
21 in that.

22 So the important thing here is just to
23 make sure that everybody knows when that is coming out
24 and has the right notice and time to mess with it.

25 MS. HODGDON: Yes. Our current DEIS

1 issuance date is already set to be I believe February
2 of 2005 and that's based on a writing date, writing
3 session which it would have been November when this
4 becomes December, we believe now it might, we're not
5 sure. Then that date might flip to March and the date
6 for the issuance of the DEIS.

7 JUDGE ABRAMSON: I hope that's helpful for
8 everybody. And Staff can just keep us updated. That
9 will keep it moving along and we'll plan --

10 MS. HODGDON: I'm sorry to interrupt. Any
11 change in schedule, we're obliged to notify the Board
12 of and we will do so as soon as we have a definite
13 date. As we say now, we're not going to tell you that
14 we're definitely going to do this in December because
15 we don't know yet. But as soon as we do, we'll tell
16 you and we'll also tell you probably that that will
17 give us an issuance date of March for the DEIS.

18 JUDGE ABRAMSON: Thank you. That's very
19 helpful. Do the Intervenors have any questions on
20 that?

21 MR. LEARNER: No.

22 JUDGE ABRAMSON: Okay, anybody else have
23 any questions?

24 MR. FRANTZ: Yes, Judge Abramson, this is
25 Steve Frantz. I'd like to follow-up on the issue on

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1 the discovery. I'm not sure the record is clear on
2 this.

3 The way we read the regulations is that
4 there's a flat prohibition on discovery by means of
5 depositions or interrogatories or any other means
6 other than the discovery disclosures that are required
7 by 2.336.

8 And I would certainly hope that the Board
9 would not issue any kind of a scheduling order which
10 would allow for any additional discovery without
11 taking briefs and parties on that issue.

12 JUDGE ABRAMSON: We certainly would not.

13 MR. FRANTZ: Thank you.

14 JUDGE ABRAMSON: All right, any further
15 questions?

16 Court Reporter, are you okay? You've got
17 everything you need?

18 COURT REPORTER: Yes.

19 JUDGE ABRAMSON: All right, thank you all
20 for participating. We'll be in touch with you at some
21 time in January or February.

22 Dave, if you'll stay around, we'll give
23 you a buzz.

24 (Whereupon, at 11:30 a.m., the
25 teleconference was concluded.)

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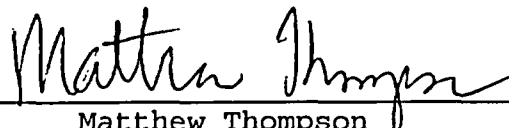
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in the matter of:

Name of Proceeding: Exelon Early Site Permit

Docket Number: 52-007-ESP

Location: telephone conference

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